

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1087 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements? -
2. To be referred to the Reporter or not? -
3. Whether Their Lordships wish to see the fair copy of the judgement? -
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? -
5. Whether it is to be circulated to the Civil Judge?  
-

-----  
ALBABHAI DULABHAI SINCE DECEASED THROUGH HEIRS & LEGAL R.

Versus

RANCHODBHAI BECHARBHAI BAROT

-----  
Appearance:

MR AKIL KURESHI for Petitioners  
RULE UNSERVED for Respondent No. 1  
MR HN BRAHMBHATT for Respondent No. 2

-----  
CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 30/07/98

ORAL JUDGEMENT

1. By means of this petition, the petitioner has prayed for quashing the judgment and order dated 24-4-1984 passed by the Deputy Collector, Vadodara and the judgment and order dated 17-11-1986 of the Gujarat Revenue Tribunal dismissing Revision Application No. TEN. BA 830 of 1984 which are at Annexure - B and C.

2. The petitioner and the respondent no. 3 have claimed the tenancy rights. While the respondents no. 1 and 2 are owners of that agricultural land. The respondent no. 3 initiated the proceedings on 21-5-1981 u/s 70 (b) of the Bombay Tenancy and Agricultural Lands Act, 1948 (referred to as the Tenancy Act). An application for interim relief was also moved u/s 70 (b) of the Tenancy Act. U/s 70 (nb) of the Tenancy Act. Interim stay order was granted on 21-5-1981. The respondents no. 1 and 2 filed an appeal against that order before the Deputy Collector. After hearing the parties, the Dy. Collector dismissed the same. Thereafter, no appeal or revision was filed against that order of interim order dated 21-5-1991 and interim stay order dated 21-5-1981 became permanent. In these proceedings the petitioner was made a party and he was also attending the proceedings. During the proceedings the entire evidence of the respondent no. 3 has already been taken before the A.L.T. Meanwhile, the said Mamlatdar and A.L.T. was transferred and another Mamlatdar and A.L.T. took over the charge before whom the cross-examination of the applicant and the other witnesses was taken. During all these proceedings the petitioner had remained present as he was joined as a party. He never claimed that he had tenancy rights over the land in question. On 12-4-1983 the petitioner moved an application without mentioning the section of any Act under which it was moved. He was knowing that the present respondent no. 3 has filed the suit regarding that very land u/s 70 (b) of the Act. in which he was impleaded as a necessary party. In spite of that, the respondent no. 3 was not impleaded as a party in his application dated 12-4-1983. A.L.T. himself also aware about the proceedings u/s 70 (b) of the Act initiated by the respondent no. 3 and without hearing the respondent no. 3, he passed the order on 25-11-1983 u/s 32 (1) (b) of the Tenancy Act that the petitioner has been proved to be a tenant of the suit land u/s 2 (18) (b) of the Tenancy Act and therefore he was entitled to purchase that land u/s 32 FF (1) with effect from 3-3-73 without any charge on the land. The petitioner was directed to deposit the price of the land Rs. 7340/- in four yearly instalments with interest in the Government treasury and on deposit of the same it was directed to be paid over to the landlord and after payment of the entire amount the purchase certificate was ordered to be issued to the petitioner. By that order dated 25-11-83 the Collector was also requested for summary proceedings u/s 84 of the Tenancy Act. The respondent no. 3 filed Tenancy Appeal No. 21/84 before the Deputy Collector, Vadodara. The Deputy Collector, Vadodara vide order dated 24-4-1984 set

aside the order dated 25-11-83 of the Addl. Mamlatdar and A.L.T. Padara. on the ground that it was within the knowledge of the A.L.T. the proceedings u/s 70 (b) of the Tenancy Act initiated by the respondent no. 3 were pending and in progress. The respondent no. 3 was made a party in the present proceedings. Though the respondent no. 3 was plaintiff of the original suit was required to be joined in the present proceedings it is against the principle of natural justice and unnecessary complication have been arisen. It was not made clear that under which provision or section of law the application was made by the petitioner. However, that application was considered u/s 32 (1) (b) of the Tenancy Act and it was necessary for him to consider at the time of the proceeding the possession of the land should be with the landlord which fact has not been considered. The petitioner was also directed to purchase the land u/s 32 FF (1) of the Tenancy Act and the purchase price was fixed u/s 32G of the Tenancy Act and to inform the Dy. Collector to initiate summary proceedings u/s 84 of the Act for eviction of the unauthorised occupants. The act of the A.L.T. was found illegal and without jurisdiction. Hence the order passed by the A.L.T. was considered liable to be set aside. The Dy. Collector also found that the inquiry u/s 32 (1) (b) of the Tenancy Act was carried out wherein the applicant - tenant gave an undertaking and within three months the possession was ordered to be restored. Such order should have been passed by holding that (the tenant) is entitled to purchase the land as on 6-3-1973 serious legal error has been committed. In case the petitioner was in possession in 1973-74 and thereafter lost it after 1974-75 then why suit was not filed for so many years and only in 1983 when the respondent no. 3 has initiated the proceeding u/s 70 (b) of the Tenancy Act joining the petitioner as a party to suit. While in the present proceedings, the respondent no. 3 was not joined as a party. It has not been made clear by the A.L.T. The Dy. Collector held the order dated 25-11-1983 being contrary to the provisions of the Tenancy Act and without jurisdiction as the petitioner was not in possession of the land, the proceedings u/s 32 (1) (b) of the Tenancy Act were commenced and the order was passed without hearing the respondent no. 3 which was against the principles of natural justice and also the application of the petitioner dated 12-4-1983 was made concealing the facts. The petitioner being aggrieved and dissatisfied by the order of the Dy. Collector, filed Revision Application No. 830 of 1984 before the Gujarat State Revenue Tribunal. The Gujarat State Revenue Tribunal after discussing all the material aspects came to the

conclusion that the order passed by the A.L.T. was not sustainable in the eye of law and the order of the Dy. Collector was justified in the facts and circumstances of the case. During the pendency of this petition in this Court Hasanbhai Albhabhai Sindha having power of attorney filed an affidavit to that effect that he withdrew the petition. He has stated therein that he does not want to proceed further in the said petition because the above mentioned lands from very beginning were in possession of the the original landlords - owners Jethabhai Ajesingbhai and the heirs of deceased Ranchhodbhai Becharbhai have been cultivating the lands and the said owners constantly continue in actual and physical possession. Neither he nor his father has ever cultivated the lands in the past or present. Neither his father nor he had any tenancy rights over the said lands. It appears that he also does not claim any tenancy right over the suit land. Later on, the petitioner filed another affidavit dated 19-3-1998 wherein he has stated that he is almost illiterate person and the heirs of the respondent no. 1 and the respondent no. 2 have by deceit and misrepresentation obtained his signature on the present document earlier referred affidavit. He has also stated in the later affidavit that there was compromise between the parties and he had good faith and on representation from the respondents no. 1 and 2 signed the said document. But subsequently the said respondents did not fulfilled their part of the promise and they had from the very beginning misled him and misrepresented the facts to him. The respondents no. 1 and 2 had represented him that they need the land in question for their personal cultivation and had agreed to pay to him a certain amount in lieu of my withdrawing the petition. Subsequently, the said respondents have tried to sell the land to a third party and they have not honoured the promise to pay any amount, though it is not mentioned in the affidavit as to what amount to be paid was agreed between the parties.

3. Heard the learned counsel for the parties at length and perused the relevant papers. Learned counsel for the petitioner contended that 15-6-1955 was the appointed date for the enforcement of the Bombay Tenancy and Agricultural Lands Act, 1948 u/s 2 (2B) of the Tenancy Act and the specified date was 3-3-1973 u/s 2 (16C) of the Tenancy Act. The petitioner was in possession of the suit land as tenant from 15-6-1955 to 3-3-1973 as held by the A.L.T. the petitioner's father was holding the land on 15-6-1955. As per the order of the Mamlatdar, Padara passed in January, 1957 u/s 15 of the Tenancy Act, in Case No. 1231/ the possession was

handed over willingly to the landlord. There is no time limit prescribed for filing the application u/s 32 FF of the Tenancy Act. The application of the petitioner was remanded to the A.L.T. to initiate proceedings. As the possession of the petitioner was not taken after carrying out the procedure prescribed under the Tenancy Act as per the order of the A.L.T. u/s 15 of the Tenancy Act passed in January, 1957 the petitioner had willingly relinquished the possession of the land and handed over the same to the landlord. After handing over possession of the land in question to the landlord, his possession continued till 1974 and he was in possession on 3-3-1973 which was a specified date u/s 2 (16C) of the Tenancy Act. The petitioner was entitled to purchase the land u/s 32 FF (1) of the Tenancy Act. If the tenant who had any time after 15-6-1955 has surrendered his land but is actually in possession on 3-3-73 then such a tenant becomes the deemed purchaser of the land on 3-3-73. Thus, the petitioner was entitled to purchase the land in question u/s 32 FF of the Tenancy Act with effect from 3-3-1973. Learned counsel for the petitioner submitted that the two authorities below have committed error on the face of the record in setting aside the order of the judgment and order of the A.L.T.

4. The learned counsel for the respondent no. 3 submitted that the petitioner has never filed any application. It was Hasanbhai Albhabhai who was holding power of attorney had initiated the proceeding and he had also filed the present petition as a power of attorney. He cannot have personal knowledge about the continuous possession of the petitioner from 1951 to 1954-55. The petitioner's claim was ripped in the year 1952-53. In the year 1955-56 the respondents no. 1 and 2 were cultivating the land in question. The petitioner was not in possession of the land on 15-6-1955. Hence, the provisions of Section 32 (1) (b) of the Tenancy Act are not attracted. The petitioner handed over the possession of the land in question to the landlord in the year 1956. The entry was affected on 1-3-61. In Tenancy Case No. 12/62 the A.L.T. held that the petitioner was not a tenant and his name was deleted by the entry no. 2298. The respondent no. 3 came in possession of the land in the year 1974-75. When the landlord intended to sell the property to a third party the respondent no. 3 initiated the Tenancy Suit No. 6058/81 on 21-5-1981 against the petitioner and the owners - the respondents no. 1 and 2 u/s 70 (b) of the Tenancy Act for a declaration that the respondent no. 3 is a tenant of the land. On the same day the interim order was also passed restraining the petitioner and the respondents no. 1 and 2 from

disturbing the possession of the respondents no. 3. The petitioner and the respondents no. 2 and 3 remained present in the proceedings before the A.L.T. The petitioner filed written statement in the said Tenancy Suit. In para 6 of the written statement the petitioner has stated that he was was not landlord or tenant of the land in dispute. After hearing the parties the A.L.T. made the injunction order against the respondents no. 1 and 2 and the petitioner, absolute. The petitioner did not file any appeal or revision against that order. Though the respondents no. 1 and 2 - land owners filed an appeal against the interim injunction order being Tenancy Appeal No. 41 of 1982 before the Dy. Collector on 24-11-1982, which was dismissed. No revision or appeal was filed against the order of the Dy. Collector either by the petitioner or the landlords. The respondent no. 3 had filed documentary evidence and examined almost all his witnesses in the court of A.L.T. During the pendency of the proceedings u/s 70 (b) of the Act the A.L.T. was transferred and another A.L.T. took over the charge before whom the petitioner moved an application for declaring him as a tenant of the land in question as Tenancy Case No. 7226/83. In these proceedings the respondent no. 3 was not impleaded as a party and in his order the A.L.T. declared the petitioner as a tenant. The respondent filed the appeal before the Dy. Collector who held that the A.L.T. committed grave error in passing the order without jurisdiction. Learned counsel for the respondent no. 3 further contended that for moving the application u/s 16 of the Act as provided limitation of one year only from the date of losing the possession. No application for condonation of delay in filing that application was moved. As such, the proceedings taken by the A.L.T. in the present case were barred by limitation and the petitioner's application was moved on 12-4-1983 which was filed after long period of 26 years.

5. Learned counsel for the respondent no. 3 contended that contended on behalf of the petitioner that Hasanbhai Albhabhai Sindha son of Albhabhai Dulbhabhai has filed the affidavit wherein he has stated that neither his father nor he was tenant or owner of the land in question. They have never been in possession of the land as owners constantly continued actual and physical possession. The petitioner cannot retract from his earlier statement made before this Hon'ble Court and there is no reason at all to ignore or reject the statement made by the petitioner the this Court by way of an affidavit dated 1-7-1997.

6. Learned counsel for the respondent no. 3 submitted that this Court has only supervisory power under Article 227 of the Constitution of India and this Court cannot exercise its power just as an Appellate Court or Revisional Court in order to correct any error of fact or even of law. In support of his contention, he has drawn the attention of this Court to the decision of the Supreme Court in the case of Mohd. Yunus Vs. Mohd. Mustaqum and others reported in AIR 1984 SUPREME COURT 38, wherein it is held that "The supervisory jurisdiction conferred on the High Courts under Art. 227 of the Constitution of India is limited "to seeing that an inferior Court or Tribunal functions within the limit of its authority" and not to correct an error apparent on the face of the record, much less an error of law. In exercising the supervisory power under Article 227, the High Court does not act an Appellate Court or Tribunal.

7. In the present case, learned Counsel for the petitioner could not answer the situation where the proceedings initiated by the respondent no. 3 were pending before whom the petitioner initiated present proceedings, the A.L.T. had not referred the proceedings initiated by the respondent no. 3. The order passed by the A.L.T. in absence of the respondent no. 3 was not justified at all in the facts and circumstances of the case and that has been set aside by the Dy. Collector and the order of the Dy. Collector was confirmed by the Gujarat State Revenue Tribunal. The order of the A.L.T. was found unjustified and illegal. The revisional court also found that the order of the A.L.T. was not legal and sustainable in the eye of law and the order passed by the Dy. Collector was confirmed. Learned counsel for the petitioner could not convince me in any respect that the order of the A.L.T. was sustainable and the orders passed by the two authorities were liable to be quashed and set aside in the facts and circumstances of the case.

8. In view of the facts and circumstances of the case stated above, I am of the opinion that the Dy. Collector was justified in setting aside the order of the A.L.T. and the order of the Gujarat State Revenue Tribunal is also sustainable in the eye of law. I find no merit in this petition and the same is hereby dismissed with no order as to costs.